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STATE OF MICHIGAN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
LANSING

MICHAEL R. DEVOS
EXECUTIVE DIRECTOR

MEMORANDUM

November 26, 2007

TO: Management Agents of Section 8 and 236 Project-Based Properties
Management Agents of Multifamily Assisted Properties

FROM: Margaret Zakrzewski, Federal Contracts Manager
Contract Administration/Office of Asset Management

Sherri Davio, Compliance Manager
Office of Legal Affairs

SUBJECT: Implementation of Handbook 4350.3 REV-1, Change 2 dated June 29, 2007

This Memorandum outlines implementation requirements related to the recently revised HUD Handbook 4350.3 REV-1, Change 2, issued June 29, 2007. Included are **Exhibit A** – HUD Handbook 4350.3 Rev-1, Change 2 Implementation Guidelines; **Exhibit B** - HUD Handbook 4350.3, REV-1 Change 2 Handbook Highlights and **Exhibit C** – MSHDA Summary of Certain New Policies-HUD Handbook 4350.3 Rev-1, CHG 2. There are also **seven Leases** containing modifications to include language updating Michigan's Provisions that are not attached. In addition, the Section 8 Lease has been modified to include paragraph 23.A from the June 2003 HUD Lease that requires the tenant to provide a 30 day notice to vacate. The leases are currently at HUD's Legal Division for review and approval.

These changes apply to all multi-family housing developments that fall under one of the following MSHDA categories:

- Performance-based HUD Section 8 contract administered;
 - Paid-off MSHDA mortgages, Section 8 subsidy administered only;
 - MSHDA-financed HUD Section 8 and Section 236;
 - MSHDA Direct Loan projects (funded under tax-exempt and taxable bond financing programs, including One Percent, 80/20, 70/30, TEAM and Home Team Advantage);
 - Pass-Through and Modified Pass-Through;
 - Stand-Alone HOME Projects;
 - NPP Projects; and
 - Low Income Housing Tax Projects (LIHTC).
- (*Note – For LIHTC developments with no MSHDA or HUD financing, changes in procedures for determining and verifying household income apply)

The purpose of this correspondence is twofold: 1) to affirm the implementation schedule set forth by HUD and 2) to clarify what MSHDA and HUD will be expecting from each Managing Agent as you begin to implement these revisions.



Item-by-Item Clarification

On November 2, 2007, MSHDA, its subcontractors, and representatives from the Detroit Multi-Family HUD Office met to determine a reasonable and consistent application of these changes. The result of our discussion is found in the following attachments.

- **Exhibit A - HUD Handbook 4350.3 Rev-1, Change 2 Implementation Guidelines** - Contains the following sections:
 - Part 1: Change 2 Clarifications,
 - Part 2: Change 2 Policy Changes, and
 - Part 3: HUD Clarifications.
- **Exhibit B - HUD Handbook 4350.3 REV-1, Change 2 Handbook Highlights** - Contains new changes that will be required of all Agents and Owners for your on-site management reviews and tenant file reviews.
- **Exhibit C - MSHDA Summary of Certain New Policies-HUD Handbook 4350.3 REV-Chg. 2** - Contains a summary of certain changes that may affect the calculation of annual income.
- **Seven leases** (not attached) containing the Michigan provisions and language modifications. HUD's legal department must approve the leases before owner/agent can implement their use. You will need to check the MMAM and HUD websites periodically to see if the leases have been approved.

Timely implementation of these 4350.3, Change 2 changes will be required, without exception. MSHDA believes training and a reasonable time period or transition period is essential for proper implementation. **Accordingly, until January 1, 2008, no adverse findings will be noted** when MSHDA staff or their subcontractors are on site to perform reviews. However, non-compliance of these 4350.3, Change 2 changes will be discussed with the Agent to ensure appropriate implementation.

The implementation process began on June 29, 2007 for all changes, except those specifically noted in Exhibit A attached. However, the revisions require full and accurate compliance by **January 1, 2008**.

Please review the accompanying information carefully to ensure a successful and timely implementation. If you have any questions, please contact us according to our areas of responsibility.

Margaret Zakrzewski at 517.335.6020 zakrzewskim@michigan.gov

- Performance-based HUD Section 8 contract administered;

Jan Zanetti, at 517.241.2043 zanettij@michigan.gov

- Paid-off MSHDA mortgages, Section 8 subsidy administered only;
- MSHDA-financed HUD Section 8

Sherri Davio, Compliance Division at 517.241.2560 Davios@michigan.gov;

- MSHDA-financed HUD Section 236;
- MSHDA Direct Loan projects (funded under tax-exempt and taxable bond financing programs, including One Percent, 80/20, 70/30 and TEAM and Home Team Advantage);
- Pass-Through and Modified Pass-Through;
- Stand-Alone HOME Projects;
- NPP Projects; and
- Low Income Housing Tax Projects (LIHTC).

Your cooperation is appreciated.

Attachments:

- Exhibit A – HUD Handbook 4350.3 Rev-1, Change 2, Implementation Guidelines
- Exhibit B – HUD Handbook 4350.3 Rev-1 Change 2, Handbook Highlights
- Exhibit C – MSHDA Summary of Certain New Policies-HUD Handbook 4350.3 Rev-1, CHG 2.

HUD Handbook 4350.3 REV-1, Change 2

Implementation Guidelines

Clarification Issues

4350.3 REV-1 Chg. 2 Reference	Description	Change 2 Clarification	MOR Issue (Y)/(N)	Date to Implement
Paragraph 3-6, Figure 3-3	Income Limits	Section 202 Program was added and clarified in Figure 3-3.	N	N/A
Paragraph 3-17 Figure 3-5	Definitions of Elderly & Disabled Used to Determine Project Eligibility	Definitions are now explained in a chart	N	N/A
Paragraph 7-7 B.1, a 2	Notices to Tenants	The sample Initial Notice was corrected to include the cut-off date language of the 10 th day of the 11 th month.	Y	June 2007
Paragraph 9-2 Figure 9-1	HUD-50059 and Subsidy Data Reporting	HUD-50059 form has been reinstated and will no longer be referred to as the 50059 Facsimile.	N	N/A
HUD 9887/9887a Forms	Tenant's Release of Information	Authorization to obtain Human Health and Services information from EIV is included in the current version of the 9887/A (2-2007).	Y	June 2007

Policy Changes

4350.3 REV-1 Chg.2 Reference	Description	Change 2 Policy Changes	MOR Issue (Y)/(N)	Date to Implement
Paragraph 2-9 C	Limited English Proficiency (LEP)	Owners must take affirmative steps to communicate with persons who need services or information in a language other than English.	Y	1/1/2008
Paragraph 4-4 C.6 and paragraph 4-14 A.1	Tenant Selection Plan (TSP)	Modifications to TSP required for Title IV and 504 and allow the applicant an alternative method of submitting an application as a reasonable accommodation.	Y	1/1/2008
Paragraph 4-4 C.5, paragraph 7-15 D and paragraph 7-16 B.2	Unit Transfer Policy	An Owner is now required to pay for a tenant's move for a reasonable accommodation transfer and owners must develop additional transfer policies.	Y	1/1/2008
Paragraph 4-9 C	Application rejection letter	The following must be added to the rejection letter: Persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process.	Y	1/1/2008
Paragraph 5-7 G.2	Annuities	Calculation for some types of annuities has changed and in those circumstances only the income is counted and it is not counted as an asset.	Y	1/1/2008

Policy Changes Continued

4350.3 REV-1 Chg.2 Reference	Description	Change 2 Policy Changes	MOR Issue (Y)/(N)	Date to Implement
Paragraph 5-15 Figure 5-5	Verification and Consent Forms	All verification and consent forms must be revised to include the updated language.	Y	1/1/2008
Exhibit 5-3 Pages 5-91 to 5-93	Medical Expenses That Are Deductible and Nondeductible	Revised definitions for Cosmetic Surgery, Medical savings accounts, Nutritional Supplements, Personal Use Items and Non- prescription Medicines.	Y	1/1/2008
Chapter 6	Lease	Owners should be notified that when they implement the new HUD Model Lease and a tenant has fulfilled the initial lease term, the subsequent lease term should be used for the new lease.	Y	N/A
Paragraph 9-12 B-5	Rent Concessions	If an owner elects to grant rent concessions, the owner cannot bill HUD for either the rental assistance or the tenant's portion of the rent for the month or months the concession is given.	Y	1/1/2008
Appendix 5 Paragraph 6-29 C.2 Clarified in HUD Q & A Summary of Questions	Move-In/Move Out Inspection Form	Forms must be modified to include the inclusion of the “decent, safe, and sanitary” statement.	Y	June 2007
Appendix 14	HUD Fact Sheet (Version 6/07)	All of the Fact Sheets “How Your Rent Is Determined” have been revised.	Y	1/1/2008

Clarification Issues

4350.3 REV-1 Chg.2 Reference	Description	HUD Clarification Required Prior To Implementation	MOR Issue (Y)/(N)	Date to Implement
Chapter 6	HUD Model Lease	HUD Model Lease including Michigan Language: Michigan version for Section 8, Section 8 Elderly and Section 202 have been revised and will be posted to HUD and MMAM websites soon.	Y	Upon HUD Approval of the Michigan Lease
Paragraph 6-5 C.2	Lease Requirements	HUD will permit modifications to the Model Lease for Subsidized Programs, but HUD must approve modifications.	Y	HUD must approve a Lease change.
Paragraph 6-5	Cooperative Occupancy Agreements	Occupancy agreements for assisted cooperatives must incorporate the cooperative's policy on unit transfers and paragraphs 15, 16, 17, 23 and 25 of the Model Lease for Subsidized Programs covering; recertification, termination of assistance, and fraud penalties.	Y	Upon HUD Approval of the Cooperative Occupancy Agreement Addendum

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2-9.C - Improving Access to Services for Persons with Limited English Proficiency (LEP) Executive Order (E.O.) 13166 requires Federal agencies and grantees to take affirmative steps to communicate with persons who need services or information in a language other than English.

1. Housing owners must take reasonable steps to ensure meaningful access to the information and services they provide for persons with LEP. This may include interpreter services and/or written materials translated into other languages.

2. HUD specific LEP Guidance, "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" was published in the Federal Register on January 22, 2007."

2-33.C - If a tenant household is being moved to a different unit as a reasonable accommodation to a household member's disability, then the owner must pay for the move unless doing so would constitute an undue financial and administrative burden.

3-6.D.8 - Projects with more than one type of subsidy. In projects with a combination of subsidy types, such as Section 221(d)(3) BMIR and Section 236 projects that also have Section 8 in a portion of the property, owners must use the eligibility income limit based on the type of assistance provided to the family. For example, applicants for a Section 236 project that receive Section 8 must qualify using the applicable Section 8 income limit.

Figure 3-3: Income Limits by Program

Subsidy	Type of Income Limit
Section 8 (pre-1981)	Low, very low, and extremely low-income limit
Section 8 (post-1981)	Very low and extremely low-income limit
Section 236	Low-income limit
Rent Supplement	Low-income limit
Rental Assistance Payment (RAP)	Low-income limit
Section 202 without assistance	Low-income limit See paragraph 3-6 D 3 for exceptions
Section 202 with Section 8 Assistance	**Pre-1981** Low, very low, and extremely low-income limit **Post-1981 Very low and extremely low-income limit**

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Section 202 with Rent Supplement	Low-income limit
Section 202 PACs	Low-income limit
Section 202/811 PRACs, <u>except</u> those funded in FY1995	Very low-income limit
Section 202/811 PRACs funded in FY 1995	Low-income limit
Section 221(d)(3) BMIR	BMIR income limit

3-17 Figure 3 – Definitions of Elderly & Disabled Used to Determine Project Eligibility

Chart not included

3-13.B.1 - Owners must determine a student's eligibility for Section 8 assistance at move-in, annual recertification, initial certification (when an in-place tenant begins receiving Section 8), and at the time of an interim recertification if one of the family composition changes reported is that a household member is enrolled as a student.

3-23.E.6.c - The owner may count children who are away at school and who live at home during recesses.

****NOTE:** Owners should not count children who are away at school who have established residency at another address or location as evidenced by a lease agreement. The new address or location is considered the student's principle place of residence.

3-27.C - Owners may also want to verify the departure of family members reported to have moved out by reviewing the lease signed by the departing member for a new residence, a new driver's license or utility bill showing the departed member's name and a new address ****or accepting a signed affidavit from the remaining head of household when reasonable efforts to obtain verification have been exhausted.**

4-4.C.1.b – Citizenship/immigration status requirements. The owner must describe how citizenship/immigration requirements are implemented, including policies regarding verification of citizenship (if any). **

4-4.C.5 – Unit Transfer Policies

Unit transfer policies, including procedures for selecting between applicants on the waiting list and current tenants who need:

- a. A unit transfer because of family size;
- b. A new unit because of changes in family composition;

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- c. A deeper subsidy (Rent Supplement, RAP, or Section 8 assistance);
- d. A unit transfer for a medical reason certified by a doctor; or
- e. A unit transfer based on the need for an accessible unit.

4-4.C.6 - Policies to Comply with Section 504 of the Rehabilitation Act of 1973, The Fair Housing Act Amendments of 1988 **and Title VI of the Civil Rights Act of 1964.**

- a. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in any program or activity receiving federal financial assistance from HUD.
- b. The Fair Housing Act prohibits discrimination in housing and housing related transactions based on race, color, religion, sex, national origin, disability and familial status. It applies to housing, regardless of the presence of federal financial assistance.
- c. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in any program or activity receiving federal financial assistance from HUD.

4-5.A – For each project assisted under a contract for project-based Section 8 assistance, the owner must lease not less than 40% of the dwelling units (assisted under the contract) that become available for occupancy in any project fiscal year to extremely low-income families. The methodology for income targeting must be described in the tenant selection plan. (For information and guidance about income limit exceptions, see paragraph 3-7.)

NOTE: Compliance with income targeting requires owners to count both move-ins and initial * *admissions to the Section 8 project based assistance program.*

For example, an initial certification processed to move a tenant from Section 236 assistance to Section 8 assistance is counted for income targeting. *

****NOTE:** Income targeting does not apply to the Section 202 PAC, Section 202 PRAC or Section 811 PRAC programs.

4-9.C – Notification of Applicant Rejection

- 1. Rejection notices must be in writing
- 2. The written rejection notice must include:
 - a. The specifically stated reason(s) for the rejection;
 - b. The applicant's right to respond to the owner in writing or request a meeting within 14 days to dispute the rejection. And

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- c. **That persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process.

4-12.F - Updating the Marketing Plan

1. The approved Affirmative Fair Housing Marketing Plan must be followed. It is the owner's blueprint for marketing activity.
2. **Owners must review their Affirmative Fair Housing Marketing Plan every five years or when the local Community Development jurisdiction's Consolidated Plan is updated.
3. When reviewing the plan, the owner should look at the current demographics of the market area to determine if there have been demographic changes in the population in terms of race, ethnicity, religion, persons with disabilities and/or large families. The owner will then determine if the population least likely to apply for the housing is still the population identified in the Affirmative Fair Housing Marketing Plan, whether current advertising sources still exist, whether the advertising and publicity cited in the current Affirmative Fair Housing Marketing Plan are still the most applicable or whether advertising sources should be changed or expanded. Even if the demographics of the community have not changed, the owner should determine if the outreach currently being performed is reaching those it is intended to reach as measured by project occupancy. If not, the Affirmative Fair Housing Marketing Plan should be updated.
4. The revised plan must be submitted to HUD for approval. HUD or the contract administrator will review whether affirmative marketing is actually being performed in accordance with the Affirmative Fair Housing Marketing Plan during an on-site monitoring review.
5. If based on their review the owner determines the Affirmative Fair Housing Marketing Plan does not need to be revised, they should maintain a file documenting what was reviewed, what was found as a result of the review, and why no change is required. HUD or the contract administrator may review this documentation during a monitoring review.**

4-14.A - Taking Applications for Occupancy - Key Requirements

1. Application. Anyone who wishes to be admitted to an assisted property or placed on a property's waiting list must complete an application. In addition to providing applicants the opportunity to complete applications at the project site, owners may also send out and receive applications by mail. Owners shall accommodate

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persons with disabilities who, as a result of their disabilities, cannot utilize the owner's preferred application process by providing alternative methods of taking applications.

2. Applicant certification. The application must include a signature from the applicant certifying the accuracy and completeness of information provided. See the discussion in Chapter 5, Section 3 for information about the Privacy Act and disclosure requirements.
3. The applicant provides self-certification of their race and ethnicity for data collection by using form HUD-27601-H (Exhibit 4-3). Completing this form is optional and there is no penalty for not completing it. Owners should not complete the form on behalf of the tenant. When the applicant chooses not to self certify race or ethnicity, a notation that the applicant chose not to provide the race and ethnicity certification should be placed in their file.

4-16.A.1 - Receiving and recording the application. Upon receipt of an application for tenancy or assistance, the owner must indicate on the application the date and time received. This may be accomplished by either using a date and time stamp or by writing and initialing the date and time received. The owner must then either process the applicant for admission, place the applicant on the waiting list or, based on a preliminary eligibility determination, reject the applicant. Examples of applicants who might be rejected based upon a preliminary eligibility determination include a 35-year old individual applying for a unit in a Section 202 PRAC property, a household of eight applying to a property with only efficiency and one-bedroom units, and an applicant with income that is \$7,000 over the income limit.

4-22.E - The applicant's or tenant's file should be available for review by the applicant or tenant upon request or by a third party who provides signed authorization for access from the applicant or tenant.”

4-22.F - The owner must dispose of applicant and tenant files and records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.”

4-25.C - Regardless of the method chosen to comply with the income-targeting rule, the results should be monitored quarterly and adjusted if necessary. The selected method must be stated in the property's tenant selection plan.

NOTE: Tracking initial admissions to the Section 8 project based assistance program is important to ensure accurate tracking. For example, an initial certification processed to move a tenant from Section 236 assistance to Section 8 assistance is counted for income targeting.

4-27C.2. - Information that an owner may learn from a landlord that may be grounds for rejecting an applicant includes:

- a. Failure to cooperate with recertification procedures;

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- b. Violations of house rules;
- c. Violations of the lease;
- d. History of disruptive behavior;
- e. Poor housekeeping practices;
- f. Previous evictions ****for lease violations****;
- g. Termination of assistance for fraud; or
- h. Conviction for the illegal manufacture, distribution, or use of controlled substances.

4-27.D.2 - If visiting an applicant's current home is part of the owner's screening practices, the owner must visit the homes of all applicants ****unless the owner has established a geographic radius within which home visits are made (see paragraph 4-7 E.5)****

4-27.E.6 - ****The owner may deny admission to an applicant using his/her standard for admission screening if the criminal background check indicates the applicant provided false information. If the determination is made by either the PHA or owner to deny admission to the applicant, the entity making the determination must:**

- a. Notify the applicant of the proposed denial of admission.
- b. Provide the subject of the record and the applicant with a copy of the information the action is based upon.
- c. Provide the applicant with an opportunity to dispute the accuracy and relevance of the information obtained from any law enforcement agency******

Figure 5-2: Whose Income is counted?

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Members	Employment Income	Other Income (including income from assets)
Head	Yes	Yes
Spouse	Yes	Yes
Co-head	Yes	Yes
Other adult	Yes	Yes
Dependents		
-Child under 18	No	Yes
Full-time student over 18	See Note	Yes
Nonmembers		
Foster child	No	No
Foster adult	No	No
Live-in aide	No	No
NOTE: The earned income of a full-time student 18 years old or older **who is a dependent** is excluded to the extent that it exceeds \$480.		

5-6.C - Income of Permanently Confined Family Members

1. An individual permanently confined to a nursing home or hospital may not be named as family head, spouse, or co-head but may continue as a family member at the family's **decision on whether or not to include the permanently confined family member as a family member determines if that person's income will** be counted.
 - a. *Include* the individual **as a family member and the** income and allowable deductions related to the medical care of the permanently confined individual **are counted**; or
 - b. *Exclude* the individual **as a family member and the** income and allowances based on the medical care of the permanently confined individual **are not counted**.
2. **If the family elects to include the** permanently confined member, **the individual** is listed on the **HUD-50059** as an adult who is not the head, spouse, or co-head, even when the permanently confined family member is married to the person who is or will become the head of the family. ** The owner should consider extenuating circumstances that may prevent the confined member from being able to sign the HUD-50059. If the owner determines the confined member is unable to sign the HUD-50059, the owner must document the file why the signature was not obtained. If the family elects not to include the permanently confined member, the individual would not be listed on the HUD-50059.**

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5-6.D Educational Scholarships or Grants

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income **except for students receiving Section 8 assistance.** This is true whether the assistance is paid to the student or directly to the educational institution

For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance. See Paragraph 3-13 for further information on eligibility of students to receive Section 8 assistance and the Glossary for the definition of Student Financial Assistance.

5-6.O - Withdrawal of Cash or Assets from an Investment

The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. **Lump sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset. See Paragraph 5-7 G.2 for guidance on calculating income from an asset.**

5-7.G.2.b - Income after the holder begins receiving payments.

- (1) When verifying an annuity, owners should ask the verification source whether the holder of the annuity has the right to withdraw the balance of the annuity. For annuities without this right, the annuity is not treated as an asset.
- (2) Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income, and no calculations of income from assets will be made.

5-7.G.2.c - Calculations when an annuity is considered an asset.

- (1) When an applicant or tenant has the option of withdrawing the balance in an annuity, the annuity will be treated like any other asset. **It will be necessary to determine the cash value of the annuity in addition to determining the actual income earned.
- (2) In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity. A fixed annuity will earn income at a fixed rate in the same manner that a CD earns income. A variable annuity will earn (or lose) based on current market conditions, as with a mutual fund.

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- (3) The owner will need to verify with the insurance agent or other appropriate source:
 - The right of the holder to withdraw the balance (even if penalties are involved).
 - The basis on which the annuity may be expected to grow during the coming year.
 - The surrender or early withdrawal penalty fee.
 - The tax rate and the tax penalty that would apply if the family withdrew the annuity.
- (4) The cash value will be the full value of the annuity, less the surrender (or withdrawal) penalty, and less any taxes and tax penalties that would be due.
- (5) The actual income is the balance in the annuity times the percentage (either fixed or variable) at which the annuity is expected to grow over the coming year. (This money will be reinvested into the annuity, but it is still considered actual income.)
- (6) The imputed income from the asset is calculated only after the cash value of all family assets has been determined. Imputed income from assets is calculated on the total cash value of all family assets.

5-7.G.5 - **Federal Government Pensions

In instances where the applicant/tenant is a retired Federal government employee receiving a pension that is determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal government employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant. (See Paragraph [5-6.K.4](#) for more information on Federal pension funds paid to a former spouse.)**

5-7.G.6 Mortgage or deed of trust.

- a. Occasionally, when an individual sells a piece of real estate, the seller may loan money to the purchaser through a mortgage or deed of trust. This may be referred to as a "contract sale."

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b. A mortgage or deed of trust held by a family member is included as an asset. Payments on this type of asset are often received as one combined payment ****that**** includes interest and principal. The value of the asset is the unpaid principal ****as of the effective date of the certification.**** Each year this balance will decline as more principal is paid off. The interest portion of the payment is counted as actual income from an asset.

5-10.D.6 - In addition to anticipated expenses, past one-time nonrecurring medical expenses that have been paid in full may be included in the calculation of the medical expense deduction ****for current tenants at an initial, interim or annual recertification. Past one-time nonrecurring medical expenses that have been paid in full are not applicable when calculating anticipated medical expenses at move-in.**** If the tenant is under a payment plan, the expense would be counted as anticipated

5-13.C.1 Review of Documents

An owner may review documents submitted by the applicant or tenant in one of the following situations:

- a. Third-party verification is not possible or is not required. For example, verifying that a family member is over 62 years old is more appropriately accomplished by examining a birth certificate than through third-party verification. ****When third party verification is not possible, refer to paragraph [5-19 E](#) for documenting the file.****
- b. Third-party verification is delayed. If information from a third party is not received within two weeks of its request, owners may consider original documents submitted by the tenant. ******

**Examples – Appropriate Occasions to Verify
Information through a Review of Documents**

- The owner sent a verification request to the tenant's employer but did not receive a response. The owner then made several calls to the employer but has not received a return call. The owner may use a review of documents (pay stubs) for verification. The owner should insist on a series of consecutive, recent pay stubs and should have a standard policy indicating the number of consecutive pay stubs required.
- The tenant's bank charges the bank account a fee for completing verification requests. The owner allows the resident to provide a current savings account statement or checking account statements for the past six months.
- The tenant's employer uses a 900 phone number, which results in a charge to the owner's phone to provide income verification. (In this case, the owner will accept the most recent consecutive eight pay stubs to verify earned income.)

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- In cases where there is no third party available, a review of documents will always be appropriate. To verify a person's age, a birth certificate may be used. A social security card is the best verification of a social security number.

5-13.D Family Certification

An owner may accept a tenant's notarized statement ****or signed affidavit**** regarding the veracity of information submitted if the information cannot be verified by another acceptable verification method.

5-15 – Required Verification and Consent Forms

Figure 5-5 - Language Required in all Consent Forms

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The following statement must appear on all consent forms developed by owners:

"Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper use of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than \$5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the **Social Security Act at 208 (a) (6), (7) and (8). Violation of these provisions are cited as violations of 42 U.S.C. 408 (a) (6), (7) and (8).**

5-17.B Effective Term of Verifications

1. Verifications are valid for ****120**** days from the date of receipt by the owner.**
2. If verifications are more than 120 days old, the owner must obtain new verifications.

5-19.E Documenting Why Third-Party Verification Is Not Available

When third-party verification is not available, owners must document in the file efforts made to obtain the required verification and the reason the verification was not obtained. The owner must include the following documents in the applicant's or tenant's file:

1. A written note to the file explaining why third-party verification is not possible; or
2. A copy of the date-stamped original request that was sent to the third party;
3. Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification; and
4. A written note to the file indicating that the request has been outstanding without a response from the third party.

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5-28 Calculating Tenant Contribution for “Double Occupancy” in Group Homes

A. Double Occupancy

Some group homes for disabled residents provide units that may be shared by unrelated single tenants. The calculations for tenant contribution and for the assistance payment vary depending on whether the project is a Section 202/8 or a Section 811.

B. Total Tenant Payment

In both Section 202/8 and Section 811 group homes, each tenant in a double occupancy room is treated as a separate family in the calculation of TTP. Each resident is entitled to any deductions he or she would receive if occupying a single room, including the \$400 elderly/disabled family deduction.

C. Contract Rent and Assistance Payment in Section 202/8 Group Homes

1. In Section 202/8 group homes, the contract rent for a room shared by two occupants is split between the two tenants.
2. The assistance payment for the Section 202/8 double occupancy room is calculated separately for each tenant based on half of the contract rent for the unit.
3. If the tenant rent for either tenant exceeds half of the contract rent, that tenant's rent will be capped at half of the contract rent. In the Section 202/8 double occupancy room, half of the contract rent is the maximum rent one occupant can pay.
4. Owner's rent-calculation software must reflect the split-unit rent and contain unit numbers that provide a distinction between tenants (e.g., unit 101A, 101B).

D. **Operating Cost and Assistance Payment in Section 811 Group Homes**

1. **In a Section 811 group home, the operating cost for a room shared by two occupants is split between the two tenants.
2. The assistance payment for the Section 811 double occupancy room is calculated separately for each tenant based on half of the operating cost for the unit.**
3. In a Section 811 property, each tenant is certified separately and pays the greater of 30% of monthly adjusted income, 10% of monthly annual income, or the welfare rent.
4. In the Section 811 double occupancy unit, both occupants will pay the calculated TTP amount **even if it exceeds their portion of** the operating **cost** for the unit.

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5. **Owner's rent-calculation software must reflect the split-unit operating cost and contain unit numbers that provide a distinction between tenants (e.g., unit 101A, 101B).**

E. Calculating Rent at Change in Occupancy

1. If there is a change in the number of individuals occupying the double occupancy unit, the assistance payment for the whole unit may change.
2. In a Section 202/8 **or a Section 811 PRAC** double-occupancy room, the rent and assistance payments are calculated as if each tenant occupied a separate unit each with a rent equaling half of the contract rent **or operating cost** for the unit. If one resident moves out, the TTP and assistance payment calculations for the remaining resident remain the same. The other half of the unit is treated like a vacant unit: there is no **assistance** payment but the owner may be eligible for vacancy loss claims for the vacated half of the unit.

5-31 - Procedures for Calculating Rent

- A. Owners must calculate tenant rent payments electronically using on-site software or a service provider. Data used to determine the rent are based on information certified as accurate by the family and independently verified.
- B. The owner's computer software calculates rent based on the appropriate formulas for the tenant's unit and produces a printed copy of the **HUD-50059** to be signed by the tenant and the owner. The owner must produce a printed report in an easily read and understood format that contains all of the information used to calculate the tenant's rent.
- C. The tenant and the owner sign a copy of the report containing a statement certifying the accuracy of the information. The certification statements are provided on the **form HUD-50059 in Appendix 7-B.** Additional information on the **HUD-50059** and the certifications can be found in Chapter 9.
- D. The owner must give a copy of the printed **HUD-50059** with the required signatures to the tenant and place another copy in the tenant file.
- E. The **HUD-50059 is** then transmitted electronically to TRACS either directly or through the Contract Administrator. Refer to Chapter 9 for information on **the HUD-50059** requirements.
- F. **In all cases, the computer generated HUD-50059 must include the required tenant signatures and owner signatures prior to submitting the data to the Contract Administrator or HUD. The owner may consider extenuating circumstances when an adult family member is not available to sign the HUD-50059, for example, an adult serving in the military, students away at college, adults who are hospitalized for an extended period of time, or a family member who is permanently confined to a nursing home or hospital. The owner must

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document the file why the signature(s) was not obtained and, if applicable, when the signature(s) will be obtained.**

Exhibit 5-1: PARTIAL LIST - Income Inclusions and Exclusions

INCOME INCLUSIONS

- (4) The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a **periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See paragraph (13) under Income Exclusions for an exception to this paragraph.**

- ** (9) For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph “financial assistance” does not include loan proceeds for the purpose of determining income.**

INCOME EXCLUSIONS

- (6) The full amount of student financial assistance paid directly to the student or to the educational institution
 (see Income Inclusions (9), above, for students receiving Section 8 assistance.)

Exhibit 5-3 - PARTIAL LIST - Examples of**

Medical Expenses That Are Deductible and Nondeductible

Medical Expenses	May Not Include
Cosmetic surgery	Do not include in medical expenses amounts paid for unnecessary cosmetic surgery. This applies to any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease. Procedures such as face-lifts, hair transplants, hair removal (electrolysis), and liposuction generally are not deductible. <u>**However, if medical complications, e.g., infections, etc., occur as a result of the procedure that requires medical treatment, the medical treatment expenses would be treated as a medical expense</u>

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	<u>deduction.**</u> Amounts paid for cosmetic surgery may be deducted if necessary to improve a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.
Medical Expenses	May Not Include
Medical savings account (MSA)	Do not deduct as a qualified medical expense amounts contributed to an Archer MSA. **
Nutritional supplements, **vitamins, herbal supplements, "natural medicines" **	Do not include in medical expenses the cost of nutritional supplements, vitamins, herbal supplements, "natural medicines," etc., <u>**unless they are recommended in writing by a medical practitioner licensed in the locality where practicing. These items must be recommended as treatment for a specific medical condition diagnosed by a physician or other health care provider licensed to make a diagnosis in the locality where practicing. Otherwise, these items are taken to maintain ordinary good health, and are not for medical care.</u> **
Personal use items	Do not include in medical expenses an item ordinarily used for personal, living, or family purposes unless it is used primarily to prevent or alleviate a physical or mental defect or illness. For example, the cost of a wig purchased upon the advice of a physician for the mental health of a patient who has lost all of his or her hair from disease <u>**or incontinence supplies** can be included with medical expenses</u>
Nonprescription medicines	<u>**Do not include in medical expenses nonprescription medicines unless they are recommended in writing by a medical practitioner licensed in the locality where practicing. These items must be recommended as treatment for a specific medical condition diagnosed by a physician or other health care provider licensed to make a diagnosis in the locality where practicing.</u> **

6-4.A - This section identifies the regulatory requirements regarding an owner's lease and the lease attachments, including the lead-based paint disclosure form, house rules, and pet regulations. It also describes procedures for meeting these requirements, identifying which

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procedures are required and which are optional. Throughout this section, the differences in policies and procedural requirements across the four model leases are identified.

NOTE: The leases may also need to be conveyed in languages other than English for LEP persons, when applicable, in accordance with HUD guidance, *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, published in the Federal Register on January 22, 2007.

6-5.C.2 – Model Lease for Subsidized Programs

HUD will permit modifications to the Model Lease for Subsidized Programs, but modifications must be approved by HUD or the Contract Administrator. (See paragraph [6-12](#) for modification procedures, and paragraphs [6-11](#) and [6-12](#) on amending and modifying leases for more information.)

6-4, 6-5 and 6-6 Leases – Summarized by MMAM

- 1) Owners must use the revised leases(s) issued in Change 2 for all new admissions. Leases for current tenants must be executed by no later than the time of the next scheduled annual recertification and no sooner than the 60-day notice requirement discussed in paragraph 6-12 of the Handbook.
- 2) Instructions on how to fill-in the leases >>> Appendix 4-E (Section 8 lease) and Appendix 4-F (Section 202 lease).
- 3) Cooperative Agreements must include paragraphs 15, 16, 17, 23 and 25 (6-4.B.2)
- 4) RD properties should use HUD model lease in Appendix 4-A with an RD addendum (6-5.F.2)
- 5) If a tenant has fulfilled the initial lease term, then the owner/agent must use the subsequent lease term (Figure 6-3) for the modified HUD lease in Change 2.

6-11.B

1. Any increase in rent must be governed by HUD regulations and requirements currently in effect.
2. HUD does not require an addendum for a change in the tenant's rent.

NOTE: The printout of the **HUD-50059** serves as an addendum identifying the change in rent.

3. If the tenant rent increases for any reason other than a tenant's failure to comply with recertification requirements, the owner must give the tenant 30 days advance written notice of the increase. The notice must state:
 - a. The reason for the increase; and
 - b. That it revises the rent at the following paragraph(s):
 - (1) Paragraph 3 of the Model Lease for Subsidized Programs;
 - (2) Paragraphs 2 and 5 of the Model Lease for Section 202/8 and Section 202 PACs; and

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- (3) Paragraphs 2 and 4 of the Model Leases for Section 202 PRACs and Section 811 PRACs.
4. If the contract rent or assistance payment changes but the tenant rent and utility allowance remain the same, the owner need only provide the tenant with a copy of the revised ****HUD-50059****. ****A copy of the revised HUD-50059 must also be filed in the tenant's file to reflect the correct gross rent and assistance payment (see paragraph 7-17 E).****

6-15.H - The owner may collect the security deposit on an installment basis. **

6-18 – Security Deposits

A. In order to receive a refund of the security deposit, a tenant must provide the owner with a forwarding address or arrange to pick up the refund. *[24 CFR 880.608(c), 881.601, 883.701, 891.435(b)(2), 891.635, and 891.775]*

NOTE: The regulations do not require the tenant to provide this type of notification to the owners in RHS 515 properties with Section 8 and properties with Section 8 LMSA and Section 8 PDSA. However, state law typically requires owners to attempt to refund a tenant's security deposit.

B. Subject to state and local laws, an owner may use the tenant's security deposit as reimbursement for any unpaid rent or other amounts the tenant owes under the lease.

C. Within 30 days after the move-out date (or shorter time if required by state and/or local laws), the owner must either:

1. Refund the full security deposit plus accrued interest to a tenant that does not owe any amounts under the lease; or
2. Provide the tenant with an itemized list of any unpaid rent, damages to the unit, and an estimated cost for repair, along with a statement of the tenant's rights under state and local laws.
 - a. If the amount the owner claims is less than the security deposit plus accrued interest, the owner must refund the unused balance to the tenant.
 - b. If the owner fails to provide the list to the tenant, the tenant is entitled to a full refund of the tenant's security deposit plus accrued interest.

NOTE: State laws may also have requirements regarding itemizing damages. When a specific federal housing program does not require an itemized list (as is the case for properties with Section 8 LMSA and Section 8 PDSA), owners must be aware of any state or local law that obligates an owner to provide the tenant with an itemized list of damages.

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D. If a disagreement arises concerning the reimbursement of the security deposit to the tenant, the tenant has the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in the tenant file for a period of three years for inspection by the HUD Field Office or Contract Administrator. These procedures do not preclude the tenant from exercising any rights under state and local law.

NOTE: The regulations for RHS 515 properties with Section 8 and properties with Section 8 LMSA and Section 8 PDSA do not require an owner to meet with the tenant or keep a record of the meeting or any disagreements.

E. If the security deposit is insufficient to reimburse the owner for any unpaid rent or other amounts that the tenant owes under the lease, the owner may be able to claim reimbursement from the HUD Field Office or Contract Administrator. (See paragraph [9-14](#) for information on special claims.)

F. Any reimbursement from HUD received by the owner must be applied first toward any unpaid tenant rent due under the lease. Additionally, no reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

6-25 – OTHER CHARGES DURING OCCUPANCY

A. When Owners May Require Other Charges

An owner may **charge tenants for** allowable charges identified under subparagraphs B, C, D, and E **below**.

B. Checks Returned for Insufficient Funds

1. Owners may impose a fee on the second time, and each additional time, a check is not honored for payment. (See paragraph 5 of the Model Lease for Subsidized Programs for more information.)
2. The owner may bill a tenant only for the amount the bank charges for processing the returned check.
3. Field Offices or Contract Administrators may authorize an owner to impose additional charges, if such charges are consistent with local management practices and are permitted by state and local laws.

****NOTE:** This paragraph does not apply to Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects. Owners of Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects cannot charge fees for checks returned for insufficient funds.**

C. Damages

1. Whenever damage is caused by carelessness, misuse, or neglect on the part of the tenant, household member, or visitor, the tenant is obligated to

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reimburse the owner for the damages within 30 days after the tenant receives a bill from the owner.

2. An owner may deduct accrued, unpaid damage charges from the tenant's security deposit at the time of move-out, if such a deduction is permitted under state and local laws.

3. The owner's bill is limited to actual and reasonable costs incurred by the owner for repairing the damages.

D. Special Management Services

1. An owner may charge a tenant for special services such as responding to lock-out calls and providing extra keys.

2. At the time of move-out, the owner may charge the tenant a fee for each key not returned.

3. An owner may not charge a tenant for bad behavior, such as foul language, noise, or failure to supervise children. However, if such behavior is serious or prolonged, it may be grounds for termination of tenancy.

E. Court Filing, Attorney, and Sheriff Fees

1. Owners may accept payment of these fees from tenants who wish to avoid or settle an eviction suit provided:

a. It is permitted under state and local laws; and

b. The fees appear reasonable and do not exceed the actual costs incurred.

Cooperatives may collect legal and other out-of pocket costs incurred in collecting delinquent carrying charges and in terminating a membership following a member's default under the occupancy agreement.

2. Key Regulations occupancy agreement requires members to pay attorney fees even if the cooperative has not filed a suit. Any charges levied on a cooperative member must be consistent with state and local law and policies approved by the cooperative's Board.

F. Owners May Require Tenants to Pay Other Charges:

1. If HUD or Contract Administrator has approved the charges; and

2. The schedule of charges is either:

a. Listed in the lease agreement; or

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b. Has been distributed to all tenants in accordance with the modification of the lease requirements and procedures listed in this chapter, paragraph **6-12 D. **

6-29.C - Move-In Inspection Requirements

1. Before executing a lease, the owner and tenant must jointly inspect the unit.
2. After the owner conducts a unit inspection, the inspection form must indicate the condition of the unit. The condition of the unit must be decent, safe, sanitary, and in good repair. If cleaning or repair is required, the owner must specify on the inspection form the date by which the work will be completed. The date must be no more than 30 days after the effective date of the lease.
3. Both the owner and the tenant must sign and date the inspection form.
**The inspection form must include the statement, "The unit is in decent, safe and sanitary condition". **
4. The tenant has 5 days to report any additional deficiencies to the owner to be noted on the move-in inspection form.
5. The move-in inspection form must be made part of the lease, as an attachment to the lease.

Figure 7-2: Comparison of Live-in Aid and Adult Child in 202/8 and 202 PRAC projects

	202/8	202 PRAC
Admission to household after initial occupancy:		
Live-in aide	Yes	Yes
Adult child	Yes – if needed for essential care of family member	Yes - Only if performing function of live-in aide
Income counted:		
Live-in aide	No	No
Adult child	Yes	No
Counted as member of family:		
Live-in aide	No	No
Adult child	Yes	No
Right to remain in unit: (See paragraphs 7-4.D and 3-6.E.3 for lease addendum requirements.)		
Live-in aide	No	No

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Adult child	No	No
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7-4.A

4. At each ****annual**** recertification, the owner must provide the tenant with a copy of the HUD fact sheet describing how the tenant's rent is ****determined****. These fact sheets are included in **Appendix 14**.
5. ****Owners have the authority to require a criminal background check on current tenants at recertification.** Owners who adopt the policy of conducting criminal background checks at recertification must conduct a criminal background check on all tenants at recertification. If the criminal background check indicates that the tenant is in violation of the provisions of the lease, the owner may evict the tenant in accordance with the lease and the owner's standards for termination of tenancy. The owner must:
 - a. Notify the household of the proposed action based on the information.
 - b. Must provide the subject of the criminal record and the tenant with a copy of the information and an opportunity to dispute the accuracy and relevance of the information obtained from any law enforcement agency.

7-7.B.1.a.2 – Description of Required Notices

- a. The Initial Notice must do the following:
 - (1) Refer to the requirements in the HUD model lease regarding the tenant's responsibility to recertify annually.
 - (2) Specify the cutoff date (the 10th day of the 11th month after the last annual recertification) by which the tenant must contact the owner and provide the required information and signatures necessary for the owner to process the recertification.

7-11 Owner Responsibilities

- A. Owners must process an interim recertification if a tenant reports:
 1. A change in family composition;
 2. An increase in ****a family's cumulative**** income of more than \$200 per month;
 3. An increase in allowances (e.g., number of dependents, a new disability assistance expense);
 4. Most decreases in income except in the circumstance described in subparagraph ****D**** below; or
 5. A change in citizenship or eligible immigration status of any family members.

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NOTE: See Chapters 3, 4, and 8 for other citizenship and eligible immigration status requirements. (Restriction on assistance to noncitizens is addressed in paragraph 3-12, denial of assistance is addressed in paragraph 4-31, and termination of assistance is addressed in paragraph 8-7.)

- B. **If a tenant reports a change in income that does not increase the household's cumulative income by \$200 or more a month, the owner should not process an interim recertification to increase the tenant's rent. If a tenant reports any other change addressed above along with an increase in income that does not increase the household's cumulative income by \$200 or more a month, the owner should not include the increase in income in processing the interim recertification.
1. Example: The tenant reports that a family member has gone to work part-time. The owner verifies the employment income and learns that the household's cumulative income will only increase by \$150 per month. The owner should not process an interim recertification.
 2. Example: The tenant reports they have a new baby and also that a family member has gone to work part-time. The owner verifies the employment income and learns that the household's cumulative income will only increase by \$100 per month. The owner should process an interim recertification to include the new baby as a dependent but should not include the increase in income.**

7-15

- C. **In the case of a unit transfer, both the change in rent and change in the assistance payment are effective on the day the tenant actually occupies the new unit.**
- D. Owners ****must**** develop additional unit transfer policies to address tenant transfer requests beyond those needed for change in family size, including transfers needed for medical reasons or to accommodate a person with a disability.
- E. Owners ****are**** obligated to transfer tenants to different units as a reasonable accommodation to a household member's disability. For example, a tenant with a physical disability might need a transfer to an accessible unit, or a unit on the ground floor, or a larger unit to accommodate a live-in aide. Transfers which are needed as a reasonable accommodation should be made on a priority basis.

7-16.B.2 - Depending upon the circumstances of the transfer, a tenant may be obligated to pay all costs associated with the move. However, if a tenant is transferred as a ****reasonable**** accommodation to a household member's disability, then the owner ****must**** pay the costs associated with the transfer, ****unless doing so would be an undue financial and administrative burden.**** See Chapter 2 for a thorough discussion of the requirements of Section 504 of the

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Rehabilitation Act of 1973 and **Chapter 2, Subsection 4 for information and guidance on Reasonable Accommodation.**

7-16.C - Written Policies

Owners **are required** to describe the unit transfer policies in a written tenant selection plan for the property, and address the following topics **(refer to Chapter 4, Figure 4-2 and Paragraph 4-4 C for Required Contents of a Tenant Selection Plan)**.

1. Transfer waiting lists;
2. Acceptable reasons for transfers;
3. Procedures for filling vacancies; and
4. Owner's policy for establishing priority for filling vacant units with either tenants awaiting transfers or applicants from the property waiting list.

7-17 - Key Requirements

- A. A gross rent change may occur due to a rent change only, a change in the utility allowance only, or due to a change in both the rent and utility allowance.
- B. Owners must comply with the tenant comment and posting procedures described in **the Code of Federal Regulations at 24 CFR 245.**
- C. Owners must submit approved gross-rent changes through their software package to the Contract Administrator or to TRACS.
- D. Owners must provide the tenant a new **HUD-50059** reflecting all changes in rents, utility allowances, total tenant payment, tenant rent, and assistance payments.
- E. **A copy of the HUD-50059 reflecting any change in the tenant rent, utility reimbursement, total tenant payment or assistance payment must be placed in the tenant file. **
- F. Tenants and owner representatives need only sign the **HUD-50059** if the gross rent change includes a change in the TTP, tenant rent, **or utility reimbursement.**

8-6.A - Terminating Assistance

3. Written notice **should** include:
 - a. The specific date the assistance will terminate;
 - b. The reason(s) for terminating assistance;
 - c. The amount of rent the tenant will be required to pay;

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- d. Notification that if the tenant fails to pay the increased rent, the owner may terminate tenancy and seek to enforce the termination in court; and
 - e. **The tenant has a right to request, within 10 calendar days from the date of the notice, a meeting with the owner to discuss the proposed termination of assistance.**
4. The notice **should** be served by:
- a. Sending a letter by first class mail, properly stamped and addressed and including a return address, to the tenant at the unit address; **and**
 - b. Delivering a copy of the notice to any adult person answering the door at the unit. If no adult answers the door, the person serving the notice may place it under or through the door, or affix it to the door.

8-9 Key Requirements

In order to terminate tenancy, the tenant must provide the owner with a written 30-day notice to vacate the unit, as required by the HUD lease.

NOTE: The regulations for RHS Section 515/8 properties permit either the tenant or the owner to terminate the lease with a 30-day written notice. This provision may be included in a one-year lease. The provision must be included in any multi-year lease.

8-14.B - Factors to Consider When Terminating Tenancy for Drug Abuse and Other Criminal Activity

****NOTE:** Owners should be careful to implement consistently all criminal background checks and decision-making procedures. Owners are required to have their procedures included as part of their Tenant Selection Plan (see Chapter 4, Figure 4-2.)**

8-14.C.3 - Upon request of the owner, the PHA must request the criminal conviction records from the state where the applicant resides and from other states where the applicant has resided. Owners and PHAs may rely on the applicant's declaration regarding their residences and any other information. **

8-14.C.7 - The owner may deny admissions to an applicant using his/her standard for admission screening or may evict a tenant in accordance with his/her standard for termination of tenancy if the criminal background check indicates that the applicant or tenant provided false information. If the household is to be denied admission or evicted, the PHA /owner making the determination must:

- a. Notify the household of the proposed denial of admission or termination of tenancy.

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- b. Provide the subject of the record and the applicant or tenant, with a copy of the information the action is based upon.
- c. Provide the applicant or tenant with an opportunity to dispute the accuracy and relevance of the information obtained from any law enforcement agency. **

8-14.C.13 - All criminal records received are to be maintained confidentially, not misused or improperly disseminated; and destroyed upon completion of the originally intended use. When destroying records of criminal background, a notation should be made in the tenant file that includes the date the records are destroyed and a statement that the records were destroyed for purposes of confidentiality.

8-17 - Procedures for Addressing Discrepancies and Errors**

A. Overview

To promote income and rent integrity, owners must investigate and research discrepancies and possible errors. The immediate objective is to determine income and rent correctly. However, the following procedures can be used in a variety of inquiries.

B. **Program Violations**

When owners identify an error involving a tenant, they should first determine if the error constitutes a **program** violation.

A program violation occurs when the tenant by action or inaction breaches a lease, regulation, or other program requirement. Tenant errors occur because tenants misunderstand or forget rules. Tenant errors are thought of as unintentional program violations.

C. Investigating and Discovering the Facts

1. If an owner suspects that a tenant has inaccurately supplied or misrepresented information that affects the tenant's rent or eligibility, the owner must investigate and document the tenant's statements and any conflicting information the owner has received. To research questionable information, the owner may:
 - a. Confront the tenant with the tenant's information and any conflicting information;
 - b. Obtain additional information from other persons or agencies; and
 - c. Take other actions to verify either the tenant's information or the conflicting information.
2. If an intentional misstatement or withholding of information cannot be substantiated through documentation, **the owner must treat the case as an unintentional program violation. **

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D. Notifying and Meeting with the Tenant

1. After gathering the documentation, the owner must notify the tenant in writing of the error and identify what information is believed to be incorrect.
2. The tenant must have an opportunity, within 10 days, to meet with the owner and discuss the allegations.
 - a. The owner must also inform the tenant that failure to do so may result in the tenant's termination of tenancy.
 - b. The meeting with the owner must be with a designated representative who has not been involved in any manner with the review of the allegedly false information.
 - c. The owner must provide a written final decision, based solely on the facts presented and discussed at the meeting to the tenant within 10 days of the date of the meeting. The decision must also state the basis for the determination.
3. For tenants with a disability, the notice must be in a form accessible to the tenant, and the meeting must be held in a location accessible to the tenant.

E. Determining the Outcome of the Investigation

1. If the tenant meets with the owner to discuss the error, and the owner is convinced the tenant's submissions were correct, the owner should document the file accordingly and close the investigation.
2. If, after meeting with the tenant, the owner determines that the provision of inaccurate information was an unintentional program violation, the owner should correct the tenant's rent, if applicable, and provide the tenant with notice of the change in rent. If the tenant is unable to repay the full amount, the owner and tenant should enter into a repayment agreement.
 - a. If, after the income adjustment, the tenant no longer qualifies for assistance, the tenant may remain in the property subject to making repayments and paying market rent.
 - b. The owner may terminate tenancy if the tenant refuses to pay the new monthly rent or refuses to repay the previously overpaid subsidy pursuant to the repayment agreement.
 - c. If necessary, civil action may be filed to recover the funds.

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Example – Unintentional Program Violation

A two-income household receives rental assistance payments. One individual works full time, which was fully disclosed during the last recertification. The other has a part-time job, but the work is on an as-needed basis. Because the income earnings were uncertain, small in amount, and infrequent, the tenant misunderstood the requirement to report income and did not report the uncertain income earnings.

3. If the owner determines the tenant knowingly provided inaccurate or incomplete information, and this can be substantiated through documentation, the owner needs to pursue the incident as fraud
following the guidance in paragraph 8-18.

8-18 - Procedures for Addressing Fraud

A. Overview

Some investigations may lead to the discovery of efforts by tenants or other parties to mislead the owner and, possibly, to commit fraudulent acts that result in the receipt of benefits or rent subsidies for which the tenant is not eligible. **If after following the procedures in paragraph 8-17 for investigating and researching questionable information, the owner may determine that the tenant has knowingly provided inaccurate or incomplete information and will pursue the incident as fraud.

B. Criminal Violation (Fraud)

A criminal violation would be fraud, which is considered deceit or trickery deliberately practiced in order to gain some advantage dishonestly. Fraud is an intentional deception; it cannot be committed accidentally.

NOTE: A common error is to misuse or overuse the term “fraud” when a violation is suspected. A violation is not always fraudulent. It is important that owners first review and assess the circumstances before labeling a violation as fraud.

C. Documenting Fraud

In order to establish fraud, the tenant file must contain documentation showing the following:

1. The tenant was made aware of program requirements and prohibitions (i.e., all appropriate signatures are on the intake documents); and
2. The tenant intentionally misstated or withheld some material information. The strongest proof of fraud is an admission by the tenant. Fraudulent intent can also be demonstrated by documenting that:
 - a. The act was done repeatedly (i.e., not a one-time or accidental occurrence), or there was prior determination of fraudulent intent or conviction (e.g., signing false **HUD-50059s**);

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- b. False names or social security numbers were used;
- c. The tenant falsified, forged, or altered documents;
- d. The tenant omitted material facts that were known to the tenant (e.g., employment of self or other household members); or
- e. The tenant made admission to another person of the illegal action or omission (e.g., boasting that he/she cheated, or telling an employer or neighbor that an "absent" spouse has moved in with the tenant).

D. Taking Action to Address Fraud

1. When fraud is present, the authorized course of action for owners to take is termination of tenancy. An owner's authority to pursue eviction in cases of tenant fraud is grounded in the material noncompliance provision contained in both the model lease and in the regulations [24 CFR 247.3]. Material noncompliance includes "knowingly providing incomplete or inaccurate information."
2. Fraud can be handled as a civil and/or criminal violation.
 - a. Fraud can be handled as a civil violation by using it as grounds for a termination of tenancy. Providing false information is a material noncompliance with the lease. The owner must seek recovery for subsidy overpayment by asking the court for judgment against the tenant.
 - b. Fraud is handled as a criminal violation when a local or federal prosecutor decides to prosecute the tenant for violation of a state or federal law. To convict the tenant, the prosecutor must show the court that the case contains all the elements of criminal fraud.
3. When a tenant is evicted for material noncompliance for submitting false, incomplete, or inaccurate information on household income or family composition required for certification or recertification, an owner must file a civil action against the tenant to recover improper subsidy payments. An owner may consider referring the case for prosecution as a criminal violation, if applicable. Prosecution may be pursued on the local, state, or federal level.
4. HUD will allow the owner to keep a portion of the repayments collected from tenants who have improperly reported income at the time of certification or recertification. The owner may retain up to a maximum of 20% of the amount of **repayments of fraudulent amounts** actually collected from the tenant to cover the owner's actual costs. The owner must reimburse the balance of the tenant repayment to HUD. (See Chapter 6 of HUD Handbook 4381.5 REV-2, *The Management Agent*

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Handbook.) These repayments to HUD are made through offsets to future vouchers submitted to HUD until the total amount has been repaid.

Figure 9-1: Key Terms

<ul style="list-style-type: none"> • HUD-50059 • Assistance payment • Gross rent • Housing Assistance Payment (HAP) • PAC (Project Assistance Contract) 	<ul style="list-style-type: none"> • PRAC (Project Rental Assistance Contract) • Project assistance payment • Project rental assistance payment • Service bureaus • Utility reimbursement
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9-5.A.4. Owners may obtain TRACS-compliant software and process their certifications and subsidy billings directly. Alternatively, owners may make arrangements to submit data to service providers who will use TRACS-compliant software to complete recertifications and billing submissions, and transmit them to HUD or ****the Contract Administrator**** on the owner's behalf.

- a. In cases ****where**** an owner uses a service provider, that company must provide the owner with printed ****copies of form HUD-50059****, form HUD-52670, and related forms that were transmitted to HUD.
- b. The owner must sign and obtain the signature of the head, spouse, co-head, and all adult family members on ****the copy of the HUD-50059 certifying to the information** that is transmitted to HUD or the Contract Administrator, whether the ****HUD-50059**** was produced on site or received from a service provider. ****The owner may consider extenuating circumstances when an adult family member is not available to sign the HUD-50059, for example, an adult serving in the military, students away at college, adults who are hospitalized for an extended period of time, or a family member who is permanently confined to a nursing home or hospital. In these instances, the owner must document the file why the signature(s) was not obtained and, if applicable, when the signature(s) will be obtained.**** The owner must provide the tenant a copy of the signed ****HUD-50059**** and retain a copy in the tenant's file. The owner must also sign and retain ****copies of the facsimile of the voucher (form HUD-52670), **** form HUD-52670-A part 1, form HUD-52670-A part 2 and other related forms ****or supporting documentation. **************

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- c. Owners that contract out or centralize the electronic-submission function must retain the ability to monitor the day-to-day operations of the property at the property site and be able to demonstrate that ability to HUD.

Figure 9-2: Deadlines for TRACS Submissions

Section 8, PAC, and PRAC Properties. The deadline for transmission of vouchers (form HUD-52670) and all related TRACS files supporting the voucher is the 10th **calendar** day of the month directly preceding the voucher payment month. For example, the February voucher TRACS transmission would be due on January 10.

RAP and Rent Supplement Properties. The deadline for transmission of vouchers (form HUD-52670) and all related TRACS files supporting the voucher is the 10th **calendar** day of the voucher payment month. For example, the February RAP or Rent Supplement voucher TRACS transmission would be due on February 10.

Vouchers submitted after this deadline date may risk late payment.

The voucher requesting payment for assistance ****must be submitted within 60 calendar days from the due date. **** An approved special claim must be submitted within ****90 calendar**** days of the approval date. ****Payment of both the voucher and approved special claims are subject to the**** availability of funds for the applicable subsidy year, as determined by HUD.

****HUD-50059s**** should be submitted ****throughout**** the month as ****the**** completed ****data is available.**
******HUD-50059s* supporting a voucher must be transmitted prior to voucher transmission.**

9-7.E Record-Keeping Requirements for HUD-50059 and Vouchers

1. Owners must keep the signed HUD-50059 for tenants from the time of move-in to move-out and for a minimum of three years thereafter. Owners may move older records off-site when files get large, ****however, upon request, the files must be made available for review by HUD or the Contract Administrator. ****
2. Owners must keep a signed paper copy of the subsidy vouchers for at least five years after HUD ****or the**** Contract Administrator action.
3. ****Owners must dispose of all files and records in a manner that will prevent any unauthorized access to personal information, e.g., pulverize, shred, etc.****

9-8.D.2 - Gross Rent Changes: If the gross rent change occurs in conjunction with an annual recertification, then the action is not a gross rent change. It is an annual recertification and a complete recertification is required. ******

9-12.B.5 - The owner must comply with the assistance contract in order to continue receiving assistance payments from HUD.

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****NOTE: If an owner elects to grant rent concessions, the owner cannot bill HUD for either the rental assistance or the tenant's portion of the rent for the month or months the concession is given. ****

9-12.E.4 - Guidelines for adjustments

- a. A Unit Transfer may involve two adjustment calculations. The end of ****assistance**** in the old unit (Unit Transfer-Out) has an effective date one day earlier than the effective date of the unit transfer. The start of ****assistance**** in the new unit (Unit Transfer-In) is as of the effective date of the unit transfer.

9-13.B - Key Requirements

1. Funds covering the utility reimbursement will be paid to the owner in trust, solely for the purpose of making utility reimbursements. **** If the utility reimbursement is not disbursed to the tenant or utility provider (e.g., tenant never picks up the check, tenant never cashes the check or tenant moves-out), the funds must be returned to HUD. The check should be voided and the funds returned to HUD as an adjustment on the voucher. The owner needs to ensure before returning the funds that the tenant has been given sufficient opportunity to cash the checks and that all attempts have been exhausted in reaching former tenants, including any requirements under state or local law. ****

Appendix 1 - AFHMP – updated form

Appendix 2A – S.A.V.E. manual removed until DHS updates manual.

Appendix 5 – Sample Move-In/Move-Out Inspection Form

Appendix 14 – HUD Fact Sheets – revised June 2007

Exhibit C

MSHDA Summary of Certain New Policies-HUD Handbook 4350.3 REV-1, Chg. 2

1. General Occupancy Standards

- **New Handbook:** The owner may count children who are away at school and who live at home during recesses. **Owners should not count children who are away at school who have established residency at another address as evidenced by a lease agreement.** (Chapter 3, Paragraph 3-23.E.6.c)
- **Old Handbook:** The owner may count children who are away at school and who live at home during recesses. (Chapter 3, Paragraph 3-22.E.6.c)
- **Applicability:** The guidelines concerning counting children who are away at school are applicable to all projects, including Section 8 projects, Section 236 projects, LIHTC projects, MSHDA Direct Loan projects (funded under tax-exempt and taxable bond financing programs, including One Percent, 80/20, 70/30, TEAM, and HOME TEAM Advantage), HOME projects, NPP projects, and Pass-Through projects.

Clarification	Full Implementation Date
This change requires that Owners no longer count children who are away at school, if they have established residency at another location as <u>evidenced by a lease.</u>	January 1, 2008

2. Periodic Payments from Long-Term Care Insurance, Pensions, Annuities, and Disability or Death Benefits

- **New Handbook:** Federal government pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are **not counted** as annual income. (Chapter 5, 5-6-K-4)
- **Old Handbook:** Not included.
- **Applicability:** The guidelines concerning periodic payments from long-term care insurance, pensions, annuities and disability or death benefits are applicable to all projects, including Section 8 projects, Section 236 projects, LIHTC projects, MSHDA Direct Loan projects (funded under tax-exempt and taxable bond financing programs, including One Percent, 80/20, 70/30, TEAM, and HOME TEAM Advantage), HOME projects, NPP projects, and Pass-Through projects.

Clarification	Full Implementation Date
This revision represents a change in the calculation of income if federal government pension funds are paid directly to an applicant or resident's former spouse as a result of divorce or separation.	January 1, 2008

3. Withdrawal of Cash or Assets from an Investment

- New Handbook:** Lump Sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset. **There is no need to determine if payments are reimbursement for amounts invested.** (Chapter 5, Page 5-16)
- Old Handbook:** When a family is making regular withdrawals from an account in which it has made an investment, withdrawals will count as income only after the amount invested has been totally paid out. (Chapter 5, 5-6-N)
- Applicability:** The guidelines concerning withdrawal of funds from an investment and the classification of certain investments as either an asset or income are applicable to all projects, including Section 8 projects, Section 236 projects, LIHTC projects, MSHDA Direct Loan projects (funded under tax-exempt and taxable bond financing programs, including One Percent, 80/20, 70/30, TEAM, and HOME TEAM Advantage), HOME projects, NPP projects, and Pass-Through projects.

Clarification	Full Implementation Date
This revision represents a significant change in the calculation of assets. All income must now be counted regardless of the original investment amount. (Chapter 5, Page 5-6-O)	January 1, 2008

4. Effective Term of Verifications

- **New Handbook:** Verifications are valid for 120 days from the date of receipt by the owner. (Chapter 5, Page 5-57)
- **Old Handbook:** Verifications are valid for 90 days from the date of receipt by the owner. (Chapter 5, Page 5-17B)

For the next 30 days (days 91–120), the owner may update the verifications orally with the verification source. As with any oral verification, the owner must include written documentation in the file.

- **Applicability:** The guidelines concerning the effective term of verifications are applicable to all projects, including Section 8 projects, Section 236 projects, LIHTC projects, MSHDA Direct Loan projects (funded under tax-exempt and taxable bond financing programs, including One Percent, 80/20, 70/30, TEAM, and HOME TEAM Advantage), HOME projects, NPP projects, and Pass-Through projects.

Clarification	Full Implementation Date
<p>The prior requirement of extending verifications up to 30 days by telephone and then documenting the verbal verification in the resident file is no longer required. The 120 days starts the day the verification is received. The date must be documented with date stamp or in writing with initials and date.</p> <p>MSHDA will consider verifications that are received by the Owner/Agent after June 29, 2007 to be valid for up to 120 days.</p>	<p>June 29, 2007</p>

5. Educational Scholarships or Grants

- **New Handbook:** Any financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private source, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income, except if the student is over the age of 23 with dependent children or if the student is living with his or her parents who are receiving Section 8 assistance. (Chapter 3, 3-13-A-4)

The exception is for students over age 23 with dependent children or students living with parents who receive Section 8 assistance. (Chapter 5, 5-6-D.; Exhibit 5-1; Page 5-82)

- **Old Handbook:** All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income. This is true whether the assistance is paid to the student or directly to the educational institution. (Chapter 5, 5-6-D)
- **Applicability:** The guidelines concerning calculation of annual income as it pertains to student financial assistance are applicable to all projects, including Section 8 projects, Section 236 projects, LIHTC projects, MSHDA Direct Loan projects (funded under tax-exempt and taxable bond financing programs, including One Percent, 80/20, 70/30, TEAM, and HOME TEAM Advantage), HOME projects, NPP projects, and Pass-Through projects.

Clarification	Full Implementation Date
<p>The revision represents a significant change in the calculation of income that became effective January 30, 2006. The financial assistance a student receives that exceeds tuition must be counted as annual income.</p> <p>Exceptions are for students older than 23 with dependent children or students living with parents receiving Section 8 assistance.</p>	<p>Effective January 30, 2006 (HUD Final Rule - December 30, 2005)</p> <p>June 29, 2007 (4350.3 REV-1, Change 2)</p>